



Resolution
dated 11.12.2023 in case 638/5519/23
Dzerzhyn District Court of Kharkiv

Case No. 638/5519/23

Proceedings No. 1-kp/638/1372/23

RESOLVED

IN THE NAME OF UKRAINE

On December 12, 2023, the Dzerzhynsky District Court of Kharkiv in the composition of:

the presiding judge with the participation of: the secretary of the court session, the prosecutor, the accused's defender, the translator - PERSON_1, - PERSON_2, - PERSON_3, - Lira Lopez PERSON_4, - PERSON_5, - PERSON_6,

having considered in a court session in the courtroom in Kharkiv the petition of lawyer Claude Nikati for granting permission to see the accused and the petition of the defense attorney OSOBA_5 for the translation of expert opinions in criminal proceedings, entered in the Unified Register of Pretrial Investigations under No. 22022220000000618 of April 12, 2022, regarding the accused

PERSON_7, INFORMATION_1, a citizen of the Republic of Chile and the Federal Republic of the United States of America, a native of Los Angeles, California, United States of America, married, officially unemployed, who has two children, actually lives at the address: ADDRESS_1, not previously convicted,

in the commission of criminal offenses provided for in Part 2 of Art. 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine,-

INSTALLED:

On November 9, 2023, the Dzerzhynsky District Court of Kharkiv received a petition from the lawyer INDIVIDUAL_8, in which he stated that he is a lawyer registered with the Neuchâtel Bar Association in Switzerland and authorized to represent interests at the International Criminal Court in The Hague and asked for a written permission to meet with to the accused PERSON_7 in the premises of the State Institution "Kharkiv Remand Isolator" by means of correspondence, provision of services for access to the global Internet network and telephone communication using IR-telephony means.

Taking into account the fact that PERSON_9 is not a participant in the court proceedings, in the court session the court raised the issue regarding the said appeal.

The prosecutor, the accused and the defense did not object to his satisfaction.

Taking into account the opinion of the participants in the case, taking into account the martial law declared in the country, in order to observe the principle of openness of the judicial process, the court reached a conclusion on the satisfaction of the petition, taking into account the following.

In the proceedings of the Dzerzhinsky District Court of Kharkiv, there is a criminal proceeding on the accusation of PERSON_7 in the commission of criminal offenses provided for in Part 2 of Art. 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine.

The decision of the Dzerzhinsky District Court of Kharkiv dated November 8, 2023 extended the preventive measure in the form of detention, chosen in relation to the accused PERSON_7, until January 6, 2024, without determining the amount of bail.

According to Part 3 of Article 26 of the Criminal Procedure Code of Ukraine, an investigating judge and a court in criminal proceedings shall decide only those issues submitted for their consideration by the parties and assigned to their powers by this Code.

According to Art. 1 of the Law "On pre-trial detention", the detention of persons taken into custody, in accordance with the tasks of criminal justice, is carried out on the principles of strict compliance with the Constitution of Ukraine, the requirements of the Universal Declaration of Human Rights, other international legal norms and standards for the treatment of prisoners and cannot be combined with intentional actions that cause physical or moral suffering or degrade human dignity.

According to Article 2 of the Law on Pre-trial Detention, the purpose of pre-trial detention is to prevent the possible evasion of a person taken into custody from pre-trial investigation bodies and the court, to hinder criminal proceedings or to engage in criminal activities, as well as to ensure the execution of the sentence and the issuance person (extradition) or his transit transportation. Visits with relatives or other persons may be granted by the administration of the place of pre-trial detention to detainees only with the written permission of the investigator or the court conducting criminal proceedings, at least three times a month. The duration of the meeting is set from one to four hours.

According to Art. 12ZU "Pre-trial detention" visits with relatives or other persons may be granted by the administration of the place of pre-trial detention to detainees only with the written permission of the investigator or the court conducting criminal proceedings, at least three times a month. The duration of the meeting is set from one to four hours.

According to the order of the Ministry of Justice of Ukraine dated September 15, 2023 No. 3292/5 "On approval of the Procedure for arranging cells with improved conditions of detention and providing paid services to ensure improved conditions of detention to persons taken into custody in pretrial detention centers of the State Criminal Enforcement Service of Ukraine" permission regarding the possibility to use a paid service for accessing the Internet and voice electronic communication using IP-telephony means is provided by an investigating judge or a court conducting criminal proceedings.

In accordance with Clause 8 of the Procedure for the Implementation of the Experimental Project on Providing Detained Persons in Pre-trial Detention Centers of the State Criminal Enforcement Service of Ukraine with Paid Internet Access and Telephone Communication Using IP Telephony, Approved by Order of the Ministry of Justice of Ukraine 09 of September 2021 No. 3191/5, a person taken into custody has the right to use the corresponding paid service for accessing the Internet and telephone communication,

provided that the corresponding payment is made to the special registration account of the pre-trial detention center, opened in the bodies of the State Treasury Service of Ukraine.

In view of the above, taking into account the stage at which the judicial review of this criminal proceeding is, the court came to the conclusion that the request for permission to meet with the accused in the State Institution "Kharkiv Detention Center" by means of correspondence, provision of services for access to the global Internet and telephone communication with the help of IR-telephony, lawyer Kloda Nikati, as a person who understands Art. 12ZU "Pretrial detention" is assigned to the "other person" category.

Also, in the court session, the defense attorney of the accused PERSON_5 submitted a request for the translation of the experts' conclusions.

The petition is based on the fact that, given that the accused does not speak the language of the criminal proceedings, and the psycho-linguistic speech examination and the linguistic semantic-textual examination are the main evidence on which the prosecution is based, the materials that were provided for conducting these examinations initially were recorded in the form of a text in English and then were translated into Ukrainian in the review protocol, as a result of which inaccuracies may appear in the wording of some phrases or in general thoughts that the author tried to convey, in order to implement an effective defense, the accused has the right to familiarize himself with the conclusions experts in English, which is his native language and which he speaks fluently.

The accused supported the motion stated by the defense counsel.

The prosecutor did not object to the granting of the request.

According to Part 1 of Art. 20 of the Criminal Code of Ukraine, the accused has the right to defense, which consists in giving him the opportunity to provide oral or written explanations about the suspicion or accusation, the right to collect and submit evidence, to take personal part in criminal proceedings, to use the legal assistance of a defender, as well as to exercise other procedural rights provided by this Code.

Pursuant to Part 1-4 of Article 29 of the Criminal Code of Ukraine, criminal proceedings are conducted in the state language. The prosecuting party, the investigating judge and the court draw up procedural documents in the state language. provide participants in criminal proceedings who do not speak or sufficiently speak the state language the right to testify, file petitions and complaints, speak everywhere in their native language or in another language that they speak, using, if necessary, translation services and in accordance with the procedure provided for by this Code. The translation of other procedural documents of criminal proceedings, the provision of copies of which is provided for by this Code, is carried out only at the request of the specified persons. The translation of court decisions and other procedural documents of criminal proceedings is certified by the translator's signature.

According to Article 293 of the Criminal Code of Ukraine, at the same time as submitting the indictment, the petition for the application of coercive measures of a medical or educational nature to the court, the prosecutor is obliged to provide a copy of them and a copy of the register of materials of the pre-trial investigation to the suspect under a receipt (except for the case provided for in the second part of Article 297-1 of this Code), to his defender, legal representative, defender of the person against whom coercive measures of a medical or educational nature are expected to be applied. If the proceedings are conducted against a

legal entity, copies of the indictment and the register of materials of the pre-trial investigation are also provided to the representative of such a legal entity.

In accordance with Part 1 of Article 68 of the Criminal Procedure Code of Ukraine, in the event of the need for the translation of explanations, statements or documents in criminal proceedings, the parties to the criminal proceedings or the investigating judge or the court shall engage an appropriate translator (sign language interpreter).

From the materials of the criminal proceedings, it can be seen that at the stage of the pre-trial investigation, the indictment and the register of the materials of the pre-trial investigation were handed over to the accused in accordance with the requirements of Article 29,293 of the Criminal Code of Ukraine, namely, the translation was carried out in the language that the accused knows, namely in English, which indicates the provision of the rights of the accused, an effective defense, a fair judge and compliance with the principle of "equality of opportunities", according to which each during the case proceedings, the party must have equal opportunities and none of the parties must have any significant advantages over the opponent, the rights of the person accused of committing a criminal offense, enshrined in subparagraphs "a", "e", paragraph 3 of Article 6 of the Convention on Protection rights and fundamental freedoms: a) to be immediately and in detail informed in a language understandable to him about the nature and reason of the accusation against him; f) if he does not understand the language used in court, or does not speak it, - to receive the free assistance of an interpreter.

In accordance with Part 6 of Article 22, Part 3 of Article 26 of the Criminal Procedure Code, the court, while maintaining objectivity and impartiality, creates the necessary conditions for the parties to exercise their procedural rights and perform procedural duties, and resolves only those issues referred to it consideration by the parties.

Paragraph 48 of the decision of the ECtHR dated November 28, 1978 in the case "Ludike, Belkasem and Koch v. Germany" determined that the right to free assistance of an interpreter applies not only to oral presentations during the proceedings, but also to documentary materials and pre-trial proceedings. Thus, anyone accused of a criminal offense who does not understand the language used in court or does not speak it has the right to receive the free assistance of an interpreter, who provides written and oral translation of all documents or statements in the proceedings against him, to understand which he needs or needs to be announced in court in the language used there in order to exercise his right to a fair trial.

From the above, it can be seen that not all documents of the criminal proceedings are subject to translation, but only the main ones, which provide an opportunity for the accused/suspect to be familiarized with the case brought against him and to have the opportunity to present his version of events to the court.

Taking into account the above, the court considers that the request for translation of experts' conclusions is subject to approval.

Refusal to grant the petition will lead to a violation of equality before the law and the court and the unfairness of the trial as a whole in the sense of the provisions of Article 6 of the Convention on the Protection of Rights and Fundamental Freedoms, will prevent the accused from exercising his right to a fair trial, to fully participate in the resolution of the issue that is crucial for him.

Guided by Art. Art. 20, 22, 26, 29, 68, 293, 369-371 of the Criminal Procedure Code of Ukraine, court,

RESOLVED:

The request of the lawyer Claude Nikati to grant permission to see the accused - to be granted.

To grant attorney Claude Nikata permission to meet with the accused PERSON_7, INFORMATION_1, who is accused of committing criminal offenses provided for in Part 2 of Article 436-2, Part 3 of Art. 436-2 of the Criminal Code of Ukraine, in the State Institution "Kharkiv Detention Center" by means of correspondence, provision of services for access to the global Internet and telephone communication using IR-telephony means.

The request of the defense attorney PERSON_5 to translate the experts' conclusions shall be granted.

Oblige the translator PERSON_6 to carry out a written translation of the opinion of the expert of the National Scientific Center "Institute of Forensic Expertise named after adv. Prof. M.M. Bokarius" Poltava Branch No. 797/798/56-62/63-69 dated January 13, 2023, expert opinion of the Kyiv Research Institute of Forensic Examinations (KNDISE) No. 8719/23-39 dated March 27, 2023, which are contained in the second volume of criminal case materials No. 638/5519/23 (proceedings No. 1-kp/638/1372/23).

The decision is not subject to appeal. Objections against the decision may be included in the appeal against the court decision provided for in the first part of Art. 392 of the Criminal Procedure Code of Ukraine.

The decision enters into force from the moment of its announcement.

Judge PERSON_1

Date of decision	11.12.2023
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